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## C. REMARKS

### ***Status of the Claims***

Claims 1-3, 6-13, and 16-57 are pending in the application. Claims 30, 33, 42, and 45 are amended. Claims 4, 5, 14, and 15 were previously canceled.

### ***35 USC 102(e)***

Claims 1-3, 6-13, 16-32, 34-44, and 46-57 stand rejected under 35 USC 102(e) as being anticipated by Baldwin et al. (US Patent 6,310,952) (hereinafter referred to as Baldwin). [Office Action, p. 2]

### **Alleged Anticipation**

Applicants respectfully assert that claims 1-3, 6-13, 16-32, 34-44, and 46-57 are not anticipated by Baldwin and therefore the claims should be allowed. In particular, Applicants note that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed Cir. 1987). Furthermore the reference must be an enabling disclosure of each and every element as set forth in the claim. *In re Hoecksmas*, 158 USPQ 596, 600 (CCPA 1968); *In re LeGrive*, 133 USPQ 365, 372 (CCPA 1962). Because Baldwin does not teach each and every element of claims 1-3, 6-13, 16-32, 34-44, and 46-57 or enable each and every element of these claims, these claims are not anticipated, the rejection should be withdrawn, and the claims should be allowed.

### **Claims 1, 11, and 21**

With regards to claims 1; 11, and 21, independent method claim 1, which is representative of independent system claim 11 and independent computer program product claim 21, with regard to similarly recited rejection, reads as follows:

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1. (Previously Amended) A method for caller position adjustment within a calling queue comprising:
  - receiving a call from a caller at a call center;
  - placing said call on hold in a calling queue of said call center, wherein said calling queue maintains an order in which calls are answered by representatives;
  - responsive to a selection of a position adjustment option by said caller while waiting on hold, transferring said call to a token advancement system while maintaining a record of said call that advances in said calling queue, wherein said token advancement system is accessible to a plurality of separate call centers via a network, wherein said token advancement system specifies for each of said plurality of separate call centers a separate selection of options from among a plurality of options for enabling said caller to earn an advancement token;
  - responsive to detecting, at said calling queue, said advancement token earned by a caller from said token advancement system, calculating a separate redemption value of said advancement token specifically for adjustment of position within said calling queue; and
  - responsive to calculating said redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue, such that said caller is allowed control over said position within said calling queue.

In the rejection of claims 1, 11, and 21, the Examiner states:

Baldwin discloses a method, system, and computer program product for caller position adjustment (e.g. adjustment could depend on other caller's dropping-out of the queue, or due to other callers making bids that is higher than the caller's bid) within a calling queue (see col. 2 lines 43-49 and col. 3 lines 44-51) comprising: receiving a call from a caller (see Fig. 1 and terminal equipment 12) at a call center (See Fig. 1 and telecommunications system 10) (See col. 3 lines 21-25); placing said call on hold in a call queue of said call center, wherein said calling queue maintains an order in which calls are answered by representatives (See Fig. 1 and service provider 19) (See col. 3 lines 25-30); responsive to a selection of a position adjustment option by said caller while waiting on hold, transferring said call to a token advancement system while maintaining a record of said call that advances in said calling queue, wherein said token advancement system is accessible to a plurality of separate call centers via a network, wherein said token advancement system specifies for each of said plurality of separate call centers a separate selection of options from among a plurality of options for enabling said caller to earn an advancement token; responsive to

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detecting at said calling queue said advancement token earned by a caller from said token advancement system, calculating a separate redemption value of said advancement token specifically for adjustment of position within said calling queue; and responsive to calculating said redemption value of said advancement token, adjusting a position of said caller according to said redemption value within said calling queue, such that said caller is allowed control over said position within said calling queue (See col. 1 lines 10-31, col. 4 lines 32-36, and col. 4-5 lines 62-24).  
[Office Action, pp. 2-3]

As to the Examiner's citation of Baldwin, col. 1, lines 10-31, col. 4, lines 32-36, and col. 4-5, lines 62-24, Applicants note that Baldwin, col. 1, lines 10-31 reads:

Telecommunication systems are used to provide many different types of services. Such services include ticket sales for entertainment events, airline reservations, stock brokerage services, and reservation services for things like golf tee times and hotel rooms. To access these services on a conventional telecommunications system, a caller simply needs to dial the phone number of the service provider and make a service request when the service provider answers the call.

The service provider is not always able to answer the call, however. Sometimes, the service that the service provider provides can become extremely popular and oversubscribed. That is, the number of callers trying to call the service providers can become greater than that which the service provider can physically handle at a given time. A prime example of this occurs when a golf course opens up its golf-tee-time reservation service for Saturday tee-times during the peak of golf season. Other examples of services that become popular and oversubscribed are services that provide access to World Series tickets and/or Super Bowl tickets. At certain times, such services typically receive many more calls than it has phone lines, and thus become oversubscribed.

In addition, Applicants note that Baldwin, col. 4, lines 32-37 reads:

In operation, calls from terminal equipment 22 are accepted by user telephony subsystem 23. Once a call is accepted, user telephony subsystem 23 connects the call to user interface subsystem 25. User interface subsystem 25 then checks whether there are any other callers in queue 27 intending to gain access to service provider 29.

Further, Baldwin, col. 4-5, lines 56-7 reads:

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Once the caller provides all the requested information, the caller is informed that he/she will be called-back when a connection to service provider 20 is available, and instructed to hang up. This enables the caller to return to his/her daily activities while waiting for access to the service provider.

When the caller hangs-up, user interface subsystem 25 notifies the user agent subsystem 24 that the caller has been included in queue 27. User agent subsystem 24 then keeps track of that caller's location in queue 27. If the caller's position in queue 27 changes drastically (e.g. due to other callers dropping-out of the queue, or due to other callers making bids that higher than the caller's bid), the user agent subsystem 24 initiates a call-back to the caller to inform the caller of the change in priority and to request new information from the caller (e.g. whether the caller wishes to make a new or higher bid), and instructs the caller to hang-up. When the caller reaches a priority position in queue 27 (e.g. a position near the top of queue 27), user agent subsystem 24 again initiates a call-back to the caller.

In summary, Applicants note that Baldwin merely describes a system for queuing callers for access to a service provider by receiving a call and placing a caller identifier in a queue so that a caller does not actually wait on hold, but is called back when a representative of the service provider may be available to speak with the caller. *Baldwin*, col. 4-5, lines 56-7. As will be further described, Baldwin does not teach the elements of (1) *responsive to a selection of a position adjustment option by said caller while waiting on hold, transferring said call to a token advancement system while maintaining a record of said call that advances in said calling queue, wherein said token advancement system is accessible to a plurality of separate call centers via a network, wherein said token advancement system specifies for each of said plurality of separate call centers a separate selection of options from among a plurality of options for enabling said caller to earn an advancement token or* (2) *responsive to detecting, at said calling queue, said advancement token earned by a caller from said token advancement system, calculating a separate redemption value of said advancement token specifically for adjustment of position within said calling queue.*

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**Baldwin does not teach or enable *responsive to a selection of a position adjustment option by said caller while waiting on hold, transferring said call to a token advancement system while maintaining a record of said call that advances in said calling queue, wherein said token advancement system is accessible to a plurality of separate call centers via a network, wherein said token advancement system specifies for each of said plurality of separate call centers a separate selection of options from among a plurality of options for enabling said caller to earn an advancement token***

Applicants respectfully assert that Baldwin does not teach or enable each and every element of claims 1, 11, and 21 because Baldwin does not teach or enable transferring the call to a token advancement system while maintaining a record of the call in the calling queue. Baldwin describes that a user interface subsystem that gathers caller information notifies a user agent subsystem that the caller has been included in the queue and then the user agent subsystem keeps track of the caller's location in the queue and initiates a callback to the caller when the position is a priority position to be answered. *Baldwin*, col. 4-5, lines 62-24. Baldwin describes a system for placing a call record in a queue and then prompting the caller to hang up, so that the initial call is no longer connected. Baldwin does not describe transferring the actual call to a token advancement system because the caller is no longer on the line. In contrast, claims 1, 11, and 21 teach transferring the call itself to a token advancement system while maintaining a record of the call that advances in the calling queue.

In addition, Applicants respectfully assert that Baldwin does not teach or enable each and every element of claims 1, 11, and 21 because Baldwin does not teach or enable transferring the call to a token advancement system that is accessible to multiple separate call centers via a network. First, Baldwin does not describe transferring the call and Baldwin does not describe a token advancement system. Second, Baldwin only describes a queuing system 21 connected between terminal equipment 22 and service provider 29. *Baldwin*, col. 4, lines 20-31. Even if queuing system 21 or a subsystem thereof was considered a token advancement system, Baldwin does not describe and the Examiner does not point to any disclosure by Baldwin of transferring

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the call to a token advancement system accessible to multiple separate call centers via a network. In contrast, claims 1, 11, and 21 teach transferring the call to a token advancement system that is accessible to multiple separate call centers via a network.

Further, Applicants respectfully assert that Baldwin does not teach or enable each and every element of claims 1, 11, and 21 because Baldwin does not teach or enable a token advancement system that specifies for each of the separate call centers a separate selection of options from among the multiple options for enabling the caller to earn an advancement token. In particular, Applicants note that Baldwin describes that a caller may enter an amount of money the caller is willing to pay to advance in the queue before hanging up. *Baldwin*, col. 4, lines 50-61. Baldwin's money-based advancement system does not describe a token advancement system that enables a caller to actually earn an advancement token and in particular does not describe a token advancement system that enables the caller to earn the advancement token while waiting on hold. In addition, Baldwin's money-based advancement system does not describe a token advancement system with multiple options for a caller to earn an advancement token redeemable for advancement in a call queue. Further, Baldwin does not describe a token advancement system that specifies the selections of options available to the caller from among the total options for earning an advancement token dependent on the call center transferring the call to the token advancement system. In contrast, claims 1, 11, and 21 teach (1) the token advancement system receiving a transferred call enables a caller to earn the advancement token while on hold; (2) the token advancement system includes multiple options for a caller to earn an advancement token while waiting on hold; and (3) the token advancement system specifies the options available to the caller for earning an advancement token dependent upon the call center transferring the call to the token advancement system.

Therefore, because Baldwin does not teach at least one element of claims 1, 11, and 21, Baldwin does not anticipate claims 1, 11, and 21 and the claims should be allowed.

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**Baldwin does not teach or enable responsive to detecting, at said calling queue, said advancement token earned by a caller from said token advancement system, calculating a separate redemption value of said advancement token specifically for adjustment of position within said calling queue**

Applicants respectfully assert that Baldwin does not teach or enable at least one element of claims 1, 11, and 21 because Baldwin does not teach or enable a calling queue that detects an advancement token earned by a caller from a token advancement system. Baldwin describes that a user interface subsystem prompts the caller for information, such as an amount that the caller would bid for a higher spot in the queue, and places the caller in a position in the queue. *Baldwin*, col. 4, lines 32-56. Baldwin's description of a user interface subsystem for prompting the caller for a bid and for managing the caller's position in the queue based on the bid does not teach a calling queue that detects an advancement token earned by the caller from a separate token advancement system. In contrast, claims 1, 11, and 21 teach a calling queue that transfers a call to a separate token advancement system and then receives an advancement token earned by the caller while on hold at the token advancement system.

In addition, Applicants respectfully assert that Baldwin does not teach or enable at least one element of claims 1, 11, and 21 because Baldwin does not teach or enable a calling queue that calculates a separate redemption value of the advancement token specifically for adjustment of position within the calling queue. In particular, Baldwin only describes that a caller may indicate an amount of money the caller is willing to pay or bid for a higher spot in the queue. *Baldwin*, col. 4, lines 51-56. As to how the bidding words, Baldwin, col. 3, lines 47-51 describes that "if the caller bids an amount that is greater than the amount bid by every other caller in the queue, then the caller may be placed at the top of the queue, and thus would be the next caller to be connected by queuing system 16 to the service provider." Baldwin does not teach or enable a calling queue that detects an advancement token from a separate token advancement system that passes advancement tokens to multiple separate calling queues and calculates a

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redemption value for the token specifically for adjustment of position in that particular calling queue. In contrast, when claims 1, 11, and 21 are viewed as a whole the claims teach a token advancement system shared between multiple separate calling queues via a network, where calls from all the calling queues are passed to the token advancement system, and that advancement tokens earned by callers from participation in one of the options for earning an advancement token are passed to the forwarding calling queue, and the calling queue then calculates a redemption value of the advancement token at that calling queue.

Therefore, because Baldwin does not teach at least one element of claims 1, 11, and 21, Baldwin does not anticipate claims 1, 11, and 21 and the claims should be allowed.

**Claims 2, 3, 6-10, 12, 13, 16-20, and 22-28**

With regard to claims 2, 3, 6-10, 12, 13, 16-20, and 22-28, Applicants respectfully propose that because Baldwin does not anticipate amended independent claims 1, 11, and 21 upon which these dependent claims rely, Baldwin also does not anticipate these dependent claims and the dependent claims should be allowed. In addition, Applicants respectfully assert that Baldwin does not teach or enable each element of claims 2, 6, 7, 8, 12, 16, 17, 18, 22, 24, 25, and 26 as will be further discussed, and therefore each of these claims should be allowed.

**Claims 2, 12, and 22**

Claim 2, which is rejected on the same grounds as claims 12 and 22, reads as follows:

2. (Previously Presented) The method for caller position adjustment within a calling queue according to claim 1, wherein detecting said advancement token further comprises:  
detecting said advancement token earned by a caller by participating in at least one from among a competition, a survey, and a redemption of membership points during a prior call made before a current call by said caller positioned in said calling queue.

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In the rejection of claims 2, 12, and 22, the Examiner states: "Baldwin discloses the method, system, and computer program product, wherein detecting said advancement token further comprises: detecting said advancement token earned by a caller by participating in at least one from among a competition, survey, and a redemption of membership points during a prior call made before a current call by said caller position in said calling queue (see col. 2, lines 32-58 and col. 3 lines 21-51)." [Office Action, pp. 3-4]

Applicants respectfully assert that Baldwin does not teach or enable at least one element of claims 2, 12, and 22 because Baldwin does not teach or enable an advancement token earned by a caller participating in at least one from among a competition, a survey, and a redemption of membership points. It is not clear from the rejection of claims 2, 12, and 22 how the portions of Baldwin cited by the Examiner teach an advancement token earned by a caller participating in at least one from among a competition, a survey, and a redemption of membership points. Applicants note that in the rejection of claims 33 and 45 it appears that the Examiner equates a caller placing a bid for a queue position adjustment as a competition. Applicants respectfully assert that a caller bidding to pay money to advance in a queue only describes a caller buying their way into a queue position and does not teach or enable an advancement token earned by the caller participating in a competition. In addition, Applicants note that Baldwin does not refer to a caller participation in a survey or redemption of membership points. Therefore, because Baldwin does not teach or enable at least one element of claims 2, 12, and 22, the claims are not anticipated and should be allowed.

#### Claims 6, 16, and 24

Claim 6, which is rejected on the same grounds as claims 16 and 24, reads:

6. (Previously Presented) The method for caller position adjustment within a calling queue according to claim 1, wherein adjusting said position further comprises:

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adjusting said position of a call within said calling queue while said call is located at said token advancement system.

Applicants note that claims 6, 16, and 24 are rejected on the same grounds as claims 1, 11, and 21. [Office Action, p. 2] Baldwin only describes adjusting a position of a caller within the queue while the caller is no longer on the line. Baldwin does not describe transferring a call to a token advancement system or adjusting the position of the call within the calling queue while the call is transferred and currently located at the token advancement system. In contrast, claims 6, 16, and 24 teach adjusting the position of a call within the calling queue while the call is located at the token advancement system. Further, when claims 6, 16, and 24 are viewed as a whole with claims 1, 11, and 21, respectively, the claims teach adjusting the position of a call within a calling queue while the call is located at the token advancement system that is shared between multiple separate calling queues. Therefore, because Baldwin does not teach or enable at least one element of claims 6, 16, and 24, the claims are not anticipated and should be allowed.

#### Claims 7, 17, and 25

Claim 7, which is rejected on the same grounds as claims 17 and 25, reads:

7. (Previously Presented) The method for caller position adjustment within a calling queue according to claim 1, further comprising:  
detecting when said caller is next in line to be answered within said calling queue; and  
transferring a next in line notification to said caller at said token advancement system.

In the rejection of claims 7, 17, and 25, the Examiner cites Baldwin, col. 3-4, lines 52-15 as anticipating claims 7, 17, and 25. [Office Action, p. 4] Applicants respectfully assert that Baldwin, col. 3-4, lines 52-15 merely describes the queuing system for triggering call backs to callers listed in the queue to locate a caller still desiring to access the service provider. Baldwin's description of performing call-backs of callers who have hung up and disconnected a call, but who are listed in a queue, to locate a  
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caller desiring access to the service provider, does not teach or enable transferring a next in line notification to the caller through the current call, where the call has been transferred to the token advancement system. In contrast, claims 7, 17, and 25 clearly teach transferring the next in line notification to the caller at the token advancement system. When claims 7, 17, and 25 are viewed as a whole with claims 1, 11, and 21, respectively, it is also clear that the caller is not called back, but the call was transferred to a token advancement system and the notification is transferred to the caller still participating in the initial call, but interfacing with the token advancement system. Therefore, because Baldwin does not teach or enable at least the element of transferring a next in line notification to the caller at the token advancement system, the claims are not anticipated and should be allowed.

Claims 8, 18, and 26

Claim 8, which is rejected on the same grounds as claims 18 and 26, reads

8. (Original) The method for caller position adjustment within a calling queue according to claim 1, further comprising:  
returning an unused portion of said advancement token to a promotion system for storage in association with said caller.

The Examiner rejects claims 8, 18, and 26 in view of Baldwin, col. 3-4, lines 52-15. Applicants note that col. 4, lines 8-15 read: "Once such an available caller is identified, queuing system 16 then connects that caller to the service connection. Once a given caller is connected to service provider 19 in such a manner, queuing system 16 automatically bills the caller for any bids that he/she made to move-up in the queue, and/or for the service provided by queuing system 16." Thus, Baldwin describes billing a caller for any bids applied that cost the caller. Baldwin does not describe pre-billing the caller and then returning any portion of the billed cost not applied. Further, Baldwin does not describe that there is an unused portion of an advancement token, which is earned by a caller, that is further stored in association with a caller. In contrast, claims 8, 18, and 26 describe that an unused portion of the advancement token, which has

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value and was earned by the caller, is stored in associated with the caller at a promotion system. Because Baldwin does not teach or enable any of the elements of claims 8, 18, and 26, Baldwin does not anticipate claims 8, 18, and 26 and the claims should be allowed.

**Claims 29, 41, and 53**

Claim 29, which is rejected on the same grounds as claims 41 and 53, reads:

29. (Previously Presented) A method for earning an adjustment in a position within a call hold queue, comprising:

- receiving, at a token advancement system, at least one call transferred from a particular call hold queue from among a plurality of separate call hold queues, wherein said token advancement system specifies a separate selection of position adjustment service options for calls received from each of said separate call hold queues;

- enabling a caller of said at least one call to participate in at least one position adjustment service selected by said caller from among a particular selection of position adjustment service options specified for calls received from said particular call hold queue; and

- responsive to a result of said caller participation in said at least one position adjustment service, transferring a token for directing adjustment of a position of one from among said at least one call and a future call within said call hold queue.

The Examiner rejects claims 29, 41, and 53 on the same grounds as claims 1, 11, and 21. [Office Action, p. 2] Applicants respectfully disagree with the Examiner's assertion that claims 29, 41, and 53 can be rejected on the same grounds as claims 1, 11, and 21. In particular, claim 1, 11, and 21 teach a method, system, and program in relation to a calling queue which passes a call to a token advancement system and receives an advancement token from a token advancement system. In contrast, claims 29, 41, and 53 teach a method, system, and program in relation to a token advancement system receiving a transferred call, enabling a caller to participate in a position adjustment service, and transferring the advancement token to the calling queue. In addition, Applicants respectfully assert that Baldwin does not anticipate

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claims 29, 41, and 53 because Baldwin does not teach or enable each of the elements of claims 29, 41, and 53

***Baldwin does not teach or enable receiving, at a token advancement system, at least one call transferred from a particular call hold queue from among a plurality of separate call hold queues, wherein said token advancement system specifies a separate selection of position adjustment service options for calls received from each of said separate call hold queues***

Applicants respectfully assert that Baldwin does not teach or enable each and every element claims 29, 41, and 53 because Baldwin does not teach or enable a token advancement system receiving a call transferred from one of multiple separate call hold queues where the token advancement system specifies a separate selection of position adjustment service options for calls received from each of the separate call hold queues. Applicants assert that even if Baldwin's description of placing a bid in col. 3, lines 43-51 were to be considered an option for position adjustment service, Baldwin does not teach a token advancement system that is enabled to receive calls from multiple separate hold queues and to specify a separate selection of multiple position adjustment options for calls received from each of the separate call hold queues. In contrast, claims 29, 41, and 53 teach a token advancement system that receives calls transferred from different call hold queues and specifies a separate selection of position adjustment service options depending on the call hold queue from which a particular call is received. Therefore, because Baldwin does not teach a token advancement system for receiving calls from multiple separate call hold queues and specifying different selections of position adjustment service options for each of the separate call hold queues, Baldwin does not anticipate claims 29, 41, and 53 and the claims should be allowed.

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***Baldwin does not teach or enable enabling a caller of said at least one call to participate in at least one position adjustment service selected by said caller from among a particular selection of position adjustment service options specified for calls received from said particular call hold queue***

Applicants respectfully assert that Baldwin does not teach or enable each and every element of claims 29, 41, and 53 because Baldwin does not teach or enable a token advancement system enabling a caller to participate in a selected service from among the particular selection of service options specified for calls received from the particular call hold queue. As previously asserted, Baldwin does not teach a token advancement service enabling a caller to participate in multiple different position adjustment service options or enabling a caller to select from multiple different position adjustment service options. Further, Baldwin does not describe a particular selection of position adjustment service options specified for calls received from the particular call hold queue. In contrast, claims 29, 41, and 53 teach a token advancement system that enables a caller to participate in at least one position adjustment service selected by the caller from among a particular selection of position adjustment service options specified for calls received from the particular call hold queue that transfers the call to the token advancement system. Therefore, because Baldwin does not teach or enable at least one element of claims 29, 41, and 53, Baldwin does anticipate claims 29, 41, and 53 and the claims should be allowed.

**Claims 30-32, 34-40, 42-44, 46-52, and 54-57**

With regard to claims 30-32, 34-40, 42-44, 46-52, and 54-57, Applicants respectfully propose that because Baldwin does not anticipate amended independent claims 29, 41, and 53 upon which these dependent claims rely, Baldwin also does not anticipate these dependent claims and the dependent claims should be allowed. In addition, Applicants respectfully assert that Baldwin does not teach or enable each element of claims 34, 40, 46, 52, and 55 as will be further discussed, and therefore each of these claims should be allowed.

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In addition, with respect to claims 30 and 42, Applicants note that these claims are amended to clarify that the call is transferred to the token advancement system from the particular call hold queue from among the plurality of separate call hold queues that the token advancement system receives calls from and specifies token advancement service options for.

Claims 34, 46, and 55

Claim 34, which is rejected on the same grounds as claims 46 and 55, reads:

34. (Previously Presented) The method for earning an adjustment according to claim 29, wherein enabling a caller further comprises:  
enabling said caller to participate in a survey for earning said token for adjustment of a position within said call hold queue;  
monitoring said result of said survey, wherein said result comprises whether said caller completes said survey; and  
creating said token indicating a position adjustment promised for participation in said survey.

The Examiner rejects claims 34, 46, and 55 on the same grounds as claims 2, 12, and 22. [Office Action, pp. 3-4] Applicants respectfully assert that Baldwin does not teach or enable at least one element of claims 34, 46, and 55 because the Examiner does not point to any portion of Baldwin that teaches or enables the claims and in fact, Baldwin does not teach or enable (1) enabling the caller to participate in a survey for earning the token for adjustment of a position within the call hold queue (2) monitoring whether the caller completes the survey; and (3) creating the token indicating a position adjustment promised for participation in the survey. Baldwin does not include any teaching of promising a caller a position adjustment for participation in and completion of a survey while waiting on hold. In addition, Baldwin does not teach creating a token indicating the position adjustment promised for the caller participation in the survey while the caller is waiting on hold at the token advancement system. Therefore, because Baldwin does not teach or enable at least one element of claims 34, 46, and 55, the claims are not anticipated and should be allowed.

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**Claims 40 and 52**

Claim 40, which is rejected on the same grounds as claim 52, reads:

40.(Original) The method for earning an adjustment according to claim 29, further comprising:

receiving an indicator that said call is next to be answered; and

alerting said caller of said indicator.

The Examiner rejects claims 40 and 52 on the same grounds as claims 7, 17, and 25. [Office Action, p. 4] Applicants respectfully assert that Baldwin, col. 3-4, lines 52-15 merely describes the queuing system for triggering call backs to callers listed in the queue to locate a caller still desiring to access the service provider. Baldwin's description of performing call-backs of callers who have hung up and disconnected a call, but who are listed in a queue, to locate a caller desiring access to the service provider, does not teach or enable a token advancement system that first receives a call transferred from a calling queue then receiving an indicator that the call is next to be answered and alerting the caller of the indicator. In contrast, claims 40 and 52 clearly teach that the token advancement system receiving the transferred call from the calling queue also receives an indicator that the call is next to be answered and alerts the caller of the indicator. Therefore, because Baldwin does not teach or enable at least the element of alerting the caller of the indicator while the call is at the token advancement system, the claims are not anticipated and should be allowed.

***Lack of Obviousness under 35 USC § 103(a)***

**Claims 33 and 45 are not obvious under Baldwin**

Claims 33 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Baldwin et al. (6,310,952) [Office Action, p. 5] First, Applicants respectfully assert that because claims 33 and 45 are dependent claims of independent claims 29 and 41 which are not anticipated by Baldwin, claims 33 and 45 should also be allowed. In

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addition, Applicants respectfully assert that claims 33 and 45 are not obvious in view of Baldwin and therefore should be allowed.

Claim 33, which is representative of dependent system claim 45 in grounds of rejection, reads as follows:

33. (Currently Amended) The method for earning an adjustment according to claim 31, wherein enabling said caller further comprises:  
enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, a random luck game, logic game, and a word game.

In the rejection of claims 33 and 45, the Examiner states:

Baldwin discloses all of claims 33 and 45 limitations, except the method and system, wherein enabling said caller further comprises enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, a random luck game, a logic game, and a word game. Baldwin, however, does disclose the competition being between placing bids. The bids are made towards hotel rooms, airline reservations, Super Bowl tickets, golf tee times, etc. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to employ one or more of these features within the system and method, as a way of allowing the competition to be between games. [Office Action, p. 5]

The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. Applicants respectfully assert that the Examiner does not carry this burden as to claims 33 and 45 and therefore the rejection should be removed and the claims allowed.

**Baldwin does not teach or suggest *enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, logic game, and a word game***

In establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). Applicants respectfully assert that neither

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Baldwin nor the Examiner's proposed modification of Baldwin teaches or suggests all of the claimed limitations of claims 33 and 45 because Baldwin does not teach or suggest, specifically, a trivia game, a card game, a logic game, or a word game. Baldwin discloses that when a caller places a call and the call cannot be immediately answered, the queuing system gathers information about the call including "the amount of money the caller is willing to bid to move up in the queue" and disconnects the caller. *Baldwin*, col. 2, lines 15-26. In addition, Baldwin describes "The user agent subsystem is operable to keep track of each caller's position in the queue, and/or when the caller's position in the queue changes dramatically (e.g. due to other callers withdrawing from the queue, or due to other callers making higher bids than the caller." *Baldwin*, col. 2, lines 43-49. Applicants respectfully assert that regardless of whether bidding for a position in a queue to be called back is considered a competition as asserted by the Examiner, there is no teaching within Baldwin or suggested by the Examiner of any competition other than monetary bidding and in particular there is not teaching within Baldwin or suggested by the Examiner of the specific types of games claimed including a trivia game, a card game, a logic game or a word game. Because at least one element of claims 33 and 45 is not taught or suggested by Baldwin, prima facie obviousness is not established and the claims should be allowed.

In addition, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Applicants respectfully assert that neither Baldwin or the Examiner's proposed modification of Baldwin teaches or suggests all of the claimed limitations of claims 33 and 45 when the claims are viewed as a whole in combination with claims 29 and 32 and 41 and 44. Baldwin describes that the caller places a bid and then the call is disconnected and the caller is called back when a representative is available. *Baldwin*, col. 2, lines 15-26. Baldwin does not describe a separate token advancement system that receives a call

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waiting on hold that is transferred from a call hold queue or a token advancement system that facilitates a competition, including at least one of a trivia game, a card game, a logic game, or a word game. In contrast, the combination of claims 29, 32, and 41 and 44 teaches that a token advancement system receives a call transferred from a call hold queue, the token advancement system enables the caller to participate in at least one position adjustment service which includes competitions, selectable from a trivia game, a card game, a logic game, and a word game, the caller either wins or loses the competition, and responsive to result of the caller participation in the position adjustment service, the token advancement system transfers a token for directing adjustment of a position of the current call. It is inherent in claims 29 and 41 that the caller's position is maintained at a call hold queue while the caller is waiting on hold, but the caller is transferred to the token advancement system and the results of the competition at the token advancement system effect the caller's position in the hold queue. Therefore, because Baldwin does not teach or suggest a token advancement system that receives transferred calls that are also tracked in a hold queue and facilitating a game competition for the caller, where the outcome of the game effects the caller's position in the hold queue, Baldwin does not teach each and every element of claims 33 and 45 when viewed as a whole. Because at least one element of claims 33 and 45 is not taught or suggested by Baldwin, prima facie obviousness is not proven and the claims should be allowed.

**There is no suggestion or motivation to modify Baldwin to teach *enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, logic game, and a word game***

To establish a prima facie case of obviousness, there must be a suggestion or motivation to modify the references. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438, 1442 (Fed Cir. 1991). In particular, the teaching, suggestion or motivation to combine or modify the teachings of the prior art to produce the claimed invention must be found either explicitly or implicitly in the references themselves or in the knowledge generally

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available to one of ordinary skill in the art and the examiner must explicitly point to the teaching within the reference suggesting the proposed modification. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Absent such a showing, the Examiner has impermissibly used "hindsight" occasioned by Applicants' own teaching to reject the claims. *In re Surko*, 11 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997); *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); *In re Laskowski*, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989).

Baldwin discloses that when a caller places a call and the call cannot be immediately answered, the queuing system gathers information about the call including "the amount of money the caller is willing to bid to move up in the queue" and disconnects the caller. *Baldwin*, col. 2, lines 15-26. Baldwin describes that (1) services, available via the telephone, provide ticket sales or reservations services, col. 1, lines 10-14 (2) the queuing system enables the caller to reach the service provider over a communication system without having to repeatedly call the service provider and without having to spend a substantial amount of time waiting for a connection, col. 2, lines 15-19; bids are made towards moving up in the queue for the opportunity to purchase the ticket or make the reservation.

Applicants respectfully assert that regardless of whether a bidding system could be considered a competition, bidding to move up in a queue requires the caller to promise money in return for queue position adjustment. A bidding system based on who promises to pay the most money is not a competition that is a test of skill or ability. In contrast, claims 33 and 45 describe enabling a caller to participate in a competition with options including a trivia game, a card game, a logic game and a word game. These are competitions that are not about a caller promising to pay money, but require some test of skill or ability as a way for a caller to earn advancement in a hold queue. Applicants respectfully assert that there is not motivation or suggestion in Baldwin or to one with ordinary skill in the art at the time of the invention to modify a money-based

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bidding system requiring a caller to pay to a game system requiring a caller to play. Therefore, because there is no motivation or suggestion to modify Baldwin to teach *enabling said caller to participate in said competition, wherein options for types of said competition comprise at least one from among a trivia game, a card game, logic game, and a word game*, prima facie obviousness is not established and the claims should be allowed.

**There is no reasonable expectation of success in the proposed modification of Baldwin**

To establish a prima facie case of obviousness, there must be a reasonable expectation of success in the proposed modification of Baldwin. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). Baldwin describes that the caller places a bid and then the call is disconnected and the caller is called back when a representative is available. *Baldwin*, col. 2, lines 15-26. Baldwin does not disclose that the caller's position is queued for the next available representative, but the call itself is transferred to a system that facilitates the caller participating in a competition, including games, while the caller is waiting on hold. In contrast, claims 33 and 45, when viewed as a whole, teach that for a call waiting on hold, while the call position adjusts in a call queue, the call is transferred to a token advancement system that facilitates competition, including games, where the outcome of the game adjusts the caller's position in the hold queue. In view of the fact that Baldwin discloses disconnecting a call while the call position adjusts in the call queue and Baldwin only discloses a caller entering a bid and then hanging up, there is no reasonable expectation in the proposed modification of Baldwin to teach both transferring a call to a separate system while the call position adjusts in the call queue and the outcome of a game participated in while waiting on hold adjusting the caller's position in the hold queue. Therefore, because there is no reasonable expectation of success in the proposed modification of Baldwin, prima facie obviousness is not established and the claims should be allowed.

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**Conclusion**

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims are respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

Respectfully submitted,

 m 12/22/05

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